

STATE OF CALIFORNIA  
ENERGY RESOURCES  
CONSERVATION AND DEVELOPMENT COMMISSION

Emergency Rulemaking on	)	Docket No. 02-Appl-01
Appliance Efficiency Regulations	)	Order 03-0319-XX
<hr/>		

*D R A F T (March 12, 2003)*  
**ORDER ADOPTING AMENDMENTS TO APPLIANCE REGULATIONS**

**Background**

On November 20, 2002, the Energy Commission instituted an emergency rulemaking proceeding to consider amendments to the Commission's appliance efficiency regulations. The Commission delegated to its Efficiency Committee (Commissioner Pemell, Presiding Member, and Commissioner Rosenfeld, Associate Member) the authority to conduct the proceeding.

The rulemaking proceeding was begun in response to a lawsuit filed by four major appliance manufacturer trade associations, in the federal district court for the Eastern District of California: *Air-Conditioning and Refrigeration Institute, et al. v. Energy Resources Conservation and Development Commission, et al.*, E.D. Cal. No. CIV S 02-2437 WBS PAN. The lawsuit asserts that certain provisions in the appliance efficiency regulations are preempted by federal law; the Commission has contested most of the assertions. The judge has issued a preliminary injunction that forbids the Commission from enforcing the challenged provisions of the regulations during the pendency of the litigation.

When it adopted the order instituting the rulemaking proceeding, the Commission believed that it might be able to make changes to the regulations that would meet the practical, real-world concerns of the four trade associations that filed the lawsuit, and thereby obviate the need for the lawsuit. Thus the Commission stated that "[i]n addition to all other relevant factors, the Commission will consider whether the adoption or amendment of any regulation could render part or all of the litigation moot." To assess the possibility of such a resolution of the issues, the Commission Staff held a public workshop on December 13, 2002, which was attended by representatives of all four of the associations. Several proposals were discussed.

On January 16, 2003, the Efficiency Standards Committee published proposed

changes ("Express Terms") to the regulations. The Committee believed that the proposed changes met the concerns of the associations as discussed at the workshop, while still obtaining for the public the benefits of the current regulations. (Some of the proposed changes reflected corrections of mistakes or needed clarifications, which should be made regardless of the course of the litigation. Other changes were proposed solely in response to the associations' concerns.) However, the associations indicated, with regard to several of the proposals, that no changes, short of removing the challenged regulation entirely, would suffice. It would be pointless for the Commission to change the regulations solely in an attempt to meet the associations' needs if the associations continued to assert that the regulations, even as amended, are preempted. Therefore, some of the changes first proposed by the Committee were removed from consideration. On March 12, 2003, the Committee published revised Express Terms.

### **Description of the Amendments ("Informative Digest")**

On November 27, 2002, major revisions to the appliance regulations went into effect. Those revisions were the result of a rulemaking proceeding that lasted several years. The amendments we are adopting today make changes to the November 27, 2002, regulations. In summary, the amendments are:

Clarification that each provision of the regulations applies only to appliances manufactured on or after the effective date of the provision (Section 1601).

Clarification that new testing requirements apply only when a manufacturer submits a new certification statement, and extending the due dates for new certification statements for existing models (Sections 1603(a), 1606(a)).

An exception from testing requirements for specified under-20-gallon water heaters (Section 1603(a)).

Technical corrections to the "Calculations" portion of the test method for mini-tank electric water heaters (Section 1604(f)(5)(E)).

Corrections to the listing of federal standards for certain central air conditioners and heat pumps, to reflect changes to the federal standards that were made after adoption of the November 27 regulations (Section 1605.1(c)(1), Table C-2); and changes to certain definitions, which are necessitated by the corrections to Table C-2 (Section 1602(c)).

An exception from efficiency standards for specified under-20-gallon water heaters (Sections 1605.3(f)(1)&(2)).

Extensions of the dates on which new information-submittal requirements go into effect (Section 1606(a)).

Technical changes and clarifications in the list of information that manufacturers must submit to the Commission, including elimination of specified items (Table U of Section 1606(a)).

Clarification of the rule that specifies how manufacturers must report data from appliance testing (Section 1606(a)(3)(E)).

Extensions of the time periods in which the Commission Staff is required to process manufacturer certification statements (Section 1606(b)(2)(A)). (This change is necessary because the lawsuit, by making changes in the requirements for information submittal, substantially increased the burden on the Staff.)

Changes to the rules on marking (Sections 1607(b), 1607(c), 1607(d)(1)(B)):

Allowing the manufacturer's name (or brand name or trademark), model number, and date of manufacture to be marked anywhere on the appliance (the November 27 regulations require that the marking be on the nameplate).

Allowing the date of manufacture to be expressed in a code (e.g., as part of the serial number of the unit), if the manufacturer provides the code to the Commission on request.

Exceptions to the general rules for marking of name, model number, and date for certain appliances, to reflect common industry practice and to take account of practical realities (e.g., allowing the marking to be on packaging).

Elimination of marking rules for certain central air conditioners and heat pumps, for which the marking requirements were to take effect only upon the Commission's obtaining a waiver of federal preemption for the state efficiency standards applicable to those appliances. The Commission will revisit this matter during the waiver process.

Clarification that the Commission does not purport to have the authority to enforce federal efficiency standards as they apply at the point of sale (Section 1608(a)).

With the exception of the amendments to Section 1602(c), Table C-2 of Section 1605.1(c)(1), and Section 1608(a), none of the amendments are being made because the Commission believes that its regulations are preempted or otherwise forbidden by federal law. In particular, the changes to the regulations on under-20-gallon water heaters (Sections 1603(a) and 1605.3(f)(1)&(2)), information-submittal (Table U of Section 1606(a)), and marking (Sections 1607(b), 1607(c), 1607(d)(1)(B)) are being made because the Commission believes that it can substantially reduce burdens alleged by the appliance industry with only a very small effect on the goals of the regulations.

### **Adoption of Regulations**

The Commission adopts the amendments contained in the Express Terms document that was published in this proceeding on March 12, 2003, as modified by changes approved by the Commission at the March 19, 2003, Business Meeting. The Commission takes this action under the authority of, and to implement, interpret, and make specific, sections 25213, 25216(b), 25216.5(d), 25218(e), 25218.5, 25402(c), and 25553, of the Public Resources Code.

### **Findings Required by the Administrative Procedure Act**

Based on the entire record of this proceeding, the Commission finds:

The adoption of the amendments is necessary for the immediate preservation of the public peace, health and safety, or general welfare. The specific facts showing the need for immediate action are: unless the amendments are made, certain regulations will remain enjoined and the public will not gain the benefits of the challenged regulations; moreover, there is a risk that regulations could be permanently enjoined. In addition, it is necessary to provide immediate clarification of the responsibilities of those who are required to comply with the regulations, so that they can do so with minimum cost.

The amendments do not impose a mandate on local agencies or school districts.

The amendments will not result in any cost or savings to any state agency, cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, other nondiscretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the state.

The amendments will not result in a direct or reasonably foreseeable indirect physical change in the environment and therefore are not subject to the California Environmental Quality Act.

**Continuation of Delegation of Authority to the Efficiency Committee**

The Efficiency Committee has the authority to take, on behalf of the Commission, all actions reasonably necessary to have the adopted amendments go into effect, including but not limited to incorporating changes approved at the Business Meeting into the final express terms submitted to the Office of Administrative Law (OAL), preparing and filing all appropriate documents, and making any nonsubstantive changes required by OAL. The adopted amendments will expire by operation of law within 120 days of their effective date unless the Commission re-adopts them under non-emergency procedures. Therefore, the Committee shall continue this rulemaking proceeding in order to make permanent the amendments adopted today. The Committee may also consider other appropriate changes to the appliance regulations in the rulemaking.

March 19, 2003

ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

---

WILLIAM J. KEESE  
Chairman

---

ROBERT PERNELL  
Commissioner and Presiding  
Member, Efficiency Committee

---

ARTHUR H. ROSENFELD  
Commissioner and Associate  
Member, Efficiency Committee

---

JAMES D. BOYD  
Commissioner

---

JOHN L. GEESMAN  
Commissioner